

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PEREZ, ET AL, ) CV-21-5606-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JANUARY 27, 2022  
)  
BATH & BODY WORKS, LLC ET AL, ) PAGES 1-14  
)  
DEFENDANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: ANTHONY J PATEK**  
GUTRIDE SAFIER LLP  
100 PINE STREET, SUITE 1250  
SAN FRANCISCO, CA 94111

FOR THE DEFENDANT: **BY: RYAN PATRICK PHAIR**  
**EMMA HUTCHISON**  
HUNTON ANDREWS KURTH  
2200 PENNSYLVANIA AVE NW  
WASHINGTON, DC 20037

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

JANUARY 27, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 10:18 A.M.)

4 THE CLERK: CALLING CASE 21-5606. PEREZ, ET AL. V.  
5 BATH AND BODY WORKS, ET AL.

6 COUNSEL, IF YOU WOULD PLEASE STATE YOUR APPEARANCES. AND  
7 IF WE COULD BEGIN WITH PLAINTIFF AND THEN MOVE TO DEFENDANT.

8 MR. PATEK: GOOD MORNING, YOUR HONOR.

9 THIS IS ANTHONY PATEK FROM GUTRIDE SAFIER APPEARING ON  
10 BEHALF OF THE PLAINTIFFS, CARMEN PEREZ AND ANDREA BROOKS.

11 THE COURT: GOOD MORNING.

12 MR. PHAIR: GOOD MORNING, YOUR HONOR.

13 RYAN PHAIR FROM THE LAW FIRM OF HUNTON ANDREWS KURTH LLP.  
14 AND WITH ME IS EMMA HUTCHISON, ALSO FROM OUR FIRM. WE ARE  
15 REPRESENTING BATH AND BODY WORKS HERE TODAY.

16 THE COURT: ALL RIGHT. GOOD MORNING.

17 THIS IS THE DEFENDANT'S MOTION TO COMPEL ARBITRATION AS TO  
18 MS. BROOKS, ONE OF THE REPRESENTATIVE OR PROPOSED  
19 REPRESENTATIVE PLAINTIFFS OF THIS CLASS, AND FOR JURISDICTIONAL  
20 DISCOVERY REGARDING MS. PEREZ.

21 THIS IS SORT OF A DIFFICULT SITUATION. MR. PHAIR, YOUR  
22 MOVING PAPERS ARE COMPLETELY INADEQUATE TO ESTABLISH AN  
23 ARBITRATION AGREEMENT HAS BEEN REACHED BETWEEN MS. BROOKS AND  
24 DEFENDANT.

25 AND I'M PUTTING ASIDE THE NAME OF THE DEFENDANT FOR A

1       MOMENT, MR. PATEK, BUT I KNOW THAT THAT'S AN ISSUE YOU HAVE.  
2       BUT IN THE OPENING PAPERS, I HAVE AN EXEMPLAR THAT DOESN'T EVEN  
3       PURPORT TO HAVE BEEN IN EFFECT AT THE TIME THAT MS. BROOKS  
4       WOULD HAVE ENTERED THE LOYALTY PROGRAM.

5               I KNOW THAT YOU'VE CORRECTED THAT IN YOUR REPLY PAPERS,  
6       BUT MR. PATEK HARDLY HAD AN OPPORTUNITY TO REVIEW THAT. HE  
7       DIDN'T OVERLOAD MY DOCKET BY FILING OBJECTIONS, I'M SURE HE WAS  
8       GOING TO START WITH THAT. AND IN LOOKING AT THE SNOW I AND  
9       SNOW II CASES, IT LOOKS LIKE WE ARE ON THE SAME ROUTE HERE,  
10      THAT YOU MAY BE FILING A RENEWED MOTION HERE.

11              SO THAT'S WHERE I START. I'M ACTUALLY NOT AS CONCERNED  
12      WITH THE AFFILIATED AGENCY HERE, OR A COMPANY, I THINK THAT THE  
13      LAW IS PROBABLY OKAY THERE.

14              AND ON THE -- I NEEDED TO HEAR A LITTLE BIT MORE ABOUT WHY  
15      YOU NEED DISCOVERY FOR MS. PEREZ, WHY YOU CAN'T FIGURE THAT  
16      OUT. SHE DOES HAVE A COMMON NAME. I HAVE A COMMON NAME, SO I  
17      KNOW -- IT IS THE RARE PLACE I GO WHERE THERE AREN'T AT LEAST  
18      TWO BETH FREEMANS, SO IT MAY BE AS SIMPLE AS YOU NEED TO BE  
19      SURE YOU HAVE THE RIGHT PERSON, WHICH IS PERFECTLY  
20      UNDERSTANDABLE.

21              SO THOSE ARE MY INITIAL COMMENTS. SO LET ME START,  
22      MR. PHAIR -- AND MS. HUTCHINSON, LET ME START WITH YOU, IT IS  
23      YOUR MOTION.

24              MR. PHAIR: YOUR HONOR, WE DO BELIEVE THE CURRENT  
25      TERMS ARE WHAT GOVERNS. BUT WE TAKE THEIR POINT, AND IF WE

1 HAVE TO FILE A RENEWED MOTION, WE CAN DO THAT.

2 WE THINK THE FACTS ARE UNDISPUTED -- I DON'T KNOW THAT  
3 MR. PATEK COULD SAY TODAY, BUT I DON'T THINK THERE'S ANY  
4 DISPUTE ABOUT THE FACT THAT SHE SIGNED UP FOR THE REWARDS  
5 PROGRAM OR ANYTHING LIKE THAT.

6 AS A PROCEDURAL MATTER, WE WANT TO RENEW THE MOTION AND  
7 COME BACK HERE, WE CAN DO THAT, THAT'S FINE, TO GIVE THEM AN  
8 OPPORTUNITY TO RESPOND TO THAT. I'M NOT SURE IF THERE IS A  
9 RESPONSE, BUT MR. PATEK CAN SPEAK IT THAT.

10 ON THE SECOND POINT REGARDING MS. PEREZ, YOUR HONOR HAS IT  
11 EXACTLY RIGHT, CARMEN PEREZ IS A VERY COMMON NAME IN  
12 CALIFORNIA, AND SO WHEN WE LOOK AT OUR RECORDS, ANDREA BROOKS,  
13 WE COULD FIND HER RIGHT AWAY JUST GIVEN THE INFORMATION THAT  
14 SHE HAD IN THE COMPLAINT. FOR PEREZ, THERE WERE SORT OF --  
15 THERE WAS SOME CONFLICTING INFORMATION IN THE COMPLAINT IN  
16 TERMS OF LIKE WHEN, WHETHER IT WAS THE SUMMER OR THE FALL,  
17 THERE'S LOTS OF CARMEN PEREZ'S IN CALIFORNIA.

18 SO REALLY ALL WE NEED, IF MR. PATEK WOULD BE WILLING TO  
19 GIVE IT, ALL WE NEED IS AN E-MAIL ADDRESS, ADDRESS, PHONE  
20 NUMBER, AND WE COULD TELL IN TWO SECONDS WHETHER OR NOT THIS IS  
21 SUBJECT TO ARBITRATION AS WELL.

22 I WOULD SAY THAT WE THINK THAT THIS ENTIRE DISPUTE IS  
23 SUBJECT TO ARBITRATION, BUT I CERTAINLY DEFER TO YOUR HONOR ON  
24 THE PROCEDURAL POSTURE IN WHICH WE SHOULD HANDLE THIS.

25 THE COURT: SO THAT'S INTERESTING BECAUSE I ACTUALLY

1 THOUGHT YOUR DISCOVERY REQUEST WAS MODEST FOR THE TWO-HOUR  
2 DEPOSITION AND ONE INTERROGATORY. IT SOUNDS LIKE ONE  
3 INTERROGATORY MIGHT TAKE CARE OF IT.

4 MR. PHAIR: I THINK THAT'S RIGHT, YES.

5 THE COURT: SO MOST PARTIES FORGET TO GIVE ME THE  
6 ACTUAL LIST OF DISCOVERY THEY ARE REQUESTING, I REALLY  
7 APPRECIATE THAT YOU'VE OUTLINED THAT FOR ME.

8 SO THAT'S -- I WILL HEAR FROM MR. PATEK FIRST ON THAT.  
9 BUT YOU'VE ACTUALLY EVEN REDUCED THE SCOPE OF IT, AND IT'S  
10 BASIC IDENTIFYING INFORMATION. SO HE COULD PROVIDE THAT TO  
11 YOU. I MEAN, I'M SURE YOU WOULD LIKE IT VERIFIED UNDER OATH,  
12 AND SO THAT MIGHT TAKE A LITTLE BIT OF TIME, BUT YOU TWO CAN  
13 TALK ABOUT THAT.

14 ALL RIGHT. MR. PATEK, LET ME HEAR YOUR COMMENTS.

15 MR. PATEK: WELL, FIRST OF ALL, YOUR HONOR, I WANT TO  
16 THANK YOU FOR MAKING IT VERY CLEAR UP FRONT THAT YOU ARE AHEAD  
17 OF ME IN TERMS OF WHAT I WAS GOING TO POINT OUT IN MY ARGUMENTS  
18 AGAINST THESE MOTIONS.

19 YOU KNOW WITH RESPECT TO THE DISCOVERY REQUESTS, I MEAN,  
20 DISCOVERY IS OPEN. IF THEY WANTED TO SERVE A DISCOVERY  
21 REQUEST, I THINK THEY COULD HAVE. IT'S NOT REALLY CLEAR TO ME  
22 WHY THEY HAVE TO GET YOUR APPROVAL SIMPLY TO SERVE THAT ONE  
23 INTERROGATORY. YOU KNOW, MY UNDERSTANDING IS THAT MS. PEREZ  
24 HAS NOT SIGNED UP FOR THE AWARDS PROGRAM.

25 THE COURT: OKAY.

1 MR. PATEK: SO I DON'T THINK THAT THE DISCOVERY IS  
2 REALLY GOING TO CHANGE THE FACTUAL SETTING OF THIS CASE. IF  
3 THEY WANT TO ASK THOSE QUESTIONS, YOU KNOW, THEY ARE ALLOWED TO  
4 DO SO AS PART OF NORMAL DISCOVERY. I DON'T THINK WE NEED TO  
5 HAVE A WHOLE MOTION ABOUT IT.

6 YOU KNOW, IN THE MEANTIME, I THINK THIS MOTION HAS BEEN  
7 LARGELY A WASTE OF TIME. AS YOU HAVE ALREADY POINTED OUT, THE  
8 EVIDENCE THEY SUBMITTED IN THE MOTION WAS COMPLETELY  
9 INSUFFICIENT TO SUPPORT EVEN THE EXISTENCE OF AN ARBITRATION  
10 AGREEMENT WITH RESPECT TO ONE PLAINTIFF, MUCH LESS BOTH OF  
11 THEM.

12 AND YOU KNOW, I WOULD JUST POINT OUT EVEN THE EVIDENCE  
13 THAT THEY ARE SUBMITTING WITH THEIR REPLY, WHICH IS NOT  
14 APPROPRIATE, IS STILL DEFICIENT, RIGHT. I MEAN, THERE ARE TWO  
15 MEANS FOR SUPPOSEDLY SIGNING UP FOR THE ARBITRATION -- I'M  
16 SORRY, THE REWARDS PROGRAM, ONE BEING VIA NORMAL PERSONAL  
17 COMPUTER, THE OTHER ONE BEING A MOBILE DEVICE.

18 AND UNLESS I'M WRONG, THEY HAVE ONLY SUBMITTED PROOF OF A  
19 BOX REQUIRING A THE TERMS AND CONDITIONS OF THE MOBILE  
20 AGREEMENT. I DON'T THINK THERE'S ONE IN THERE FOR THE PERSONAL  
21 COMPUTER.

22 THE COURT: I THINK IN THE DECLARATION, I THINK THEY  
23 INDICATED THAT SHE SIGNED UP ON A MOBILE DEVICE.

24 MR. PHAIR: THAT'S CORRECT, YOUR HONOR.

25 ON SEPTEMBER 8TH, 2017, MS. BROOKS ENROLLED IN THE REWARDS

1 PROGRAM ON A MOBILE DEVICE. THAT IS WHAT THE DECLARATION WAS.

2 THE COURT: YEAH. SO I HAVE --

3 MR. PATEK: BUT AGAIN, THAT WAS SUPPLIED IN THE  
4 REPLY?

5 THE COURT: I THINK THAT'S IN THE REPLY, ISN'T IT, OR  
6 IS THAT IN THE --

7 MR. PHAIR: NO, THAT'S ACTUALLY IN THE -- THAT FACT,  
8 IN PARTICULAR, IS ACTUALLY IN THE ORIGINAL MOTION, I BELIEVE  
9 IT'S THE LOVELL DECLARATION AT 5-6.

10 THE COURT: OH YEAH, AT PARAGRAPH 6. THIS IS  
11 DOCUMENT 23-1. YES, IT DOES SAY ON HER MOBILE DEVICE.

12 MR. PATEK: OKAY.

13 THE COURT: THAT PART IS NAILED DOWN.

14 MR. PATEK: OKAY. IN THAT CASE, IT'S MY TURN TO DO A  
15 MEA CULPA.

16 BUT THEN THERE'S STILL GOING TO BE THE ARGUMENTS BASED ON  
17 THE AGREEMENT ITSELF. AND WE STAND ON OUR ARGUMENTS THAT THE  
18 CLEAR SCOPE OF THE AGREEMENT IS THAT IT'S JUST ABOUT THE  
19 REWARDS PROGRAM.

20 THE COURT: SO MR. PATEK, I THINK THAT YOU HAVE A  
21 REASONABLE ARGUMENT THERE, BUT THE THRESHOLD ISSUE HERE IS  
22 WHETHER THERE WAS A CLEAR AND UNMISTAKABLE DELEGATION OF THE  
23 SCOPE OF THE ARBITRATION AGREEMENT TO THE ARBITRATOR. AND  
24 GIVEN, I THINK THIS WAS AAA RULES, I MIND THAT I FOLLOW THE  
25 NINTH CIRCUIT AND THE HENRY SCHEIN CASE FROM U.S. SUPREME

1 COURT. I THINK THIS WAS CLEAR AND UNMISTAKABLE.

2 I THINK THAT'S OUTSIDE OF MY DOMAIN, I'M ONLY DETERMINING  
3 CONTRACT FORMATION, AND YOU WIN BASED ON THE INSUFFICIENCY OF  
4 THE OPENING PAPERS. YOU KNOW, JUST LIKE THE SNOW V. EVENTBRITE  
5 CASE, THERE MAY BE A RENEWED MOTION. BUT -- AND FRANKLY, IF  
6 MS. PEREZ NEVER SIGNED UP FOR THE LOYALTY PROGRAM, THIS IS A  
7 LOT OF WORK FOR MAYBE VERY LITTLE RESULT, EXCEPT THAT IT DOES  
8 INFORM ME, YOU KNEW THIS ALL ALONG, THAT CLASS CERTIFICATION  
9 WILL NOW BE ROILED WITH SOME CLASS MEMBERS HAVING ARBITRATION  
10 AGREEMENTS AND MAYBE SOME -- AND OBVIOUSLY SOME NOT, BECAUSE  
11 THEY WEREN'T PART OF THE LOYALTY PROGRAM OR THEY PURCHASED  
12 OUTSIDE OF THE LOYALTY PROGRAM. I MEAN, WE ALL MAKE PURCHASES  
13 OUTSIDE OF OUR POINT SYSTEM FOR SOME PRODUCT, JUST BECAUSE WE  
14 ARE IN A HURRY.

15 SO ANY COMMENTS -- I KNOW YOU INDICATED SHE WASN'T GIVEN A  
16 COPY OF THE ARBITRATION RULES, BUT THERE WAS A CLEAR LINK,  
17 BASED ON WHAT MR. PEREZ PROVIDED, OR HE COULD AT LEAST SHOW ME  
18 THAT IN A RENEWED MOTION, THAT THERE WAS A CLEAR LINK.

19 MR. PATEK: SO HERE YOU ARE SAYING A CLEAR LINK WITH  
20 RESPECT TO THE SIGNUP IN THE ARBITRATION PROVISION?

21 THE COURT: IF I FIND THAT THERE WAS A CONTRACT, THAT  
22 IS MY JOB, I CAN'T MAKE THAT FINDING NOW BECAUSE THE MOVING  
23 PAPERS DO NOT SUPPORT IT, AND SO I AM GOING TO DENY THE MOTION.

24 YOU ALSO BRIEFED, AND THIS WILL INFORM YOUR LATER  
25 BRIEFING, THAT THIS TRANSACTION OF PURCHASING THESE PRODUCTS,



1 IS NOT COVERED BY THE ARBITRATION AGREEMENT.

2 SO I DON'T DECIDE THAT -- IF I FIND THERE WAS A CLEAR AND  
3 UNMISTAKABLE DELEGATION, I WON'T BE DECIDING THAT ISSUE.

4 SO CLEAR AND UNMISTAKABLE DELEGATION WILL COME BACK AS AN  
5 ISSUE, THAT'S ALL I'M SAYING, AND I'M NOT RULING ON IT BECAUSE  
6 I DON'T GET TO STEP 2.

7 MR. PATEK: FAIR ENOUGH.

8 THE COURT: BUT YOU WILL KNOW TO TAKE A LOOK AT THAT  
9 FURTHER.

10 SO -- AND IN TERMS OF THE DISCOVERY, I DON'T KNOW IF  
11 DISCOVERY WAS OPEN WHEN THE MOTION WAS FILED IN SEPTEMBER. YOU  
12 ARE RIGHT, THIS IS PRETTY MODEST. AND I DON'T KNOW, MR. PHAIR,  
13 IF YOU ACTUALLY NEED AN ORDER FROM ME NOW OR YOU WON'T JUST PUT  
14 OUT AN INTERROGATORY.

15 MR. PHAIR: YEAH.

16 I MEAN, I GUESS MAYBE -- I DON'T THINK WE NEED IT  
17 NECESSARILY UNDER OATH. I MEAN, IF MR. PATEK WAS WILLING TO  
18 MAKE A REPRESENTATION TO US OF, THIS IS THE ADDRESS, THIS IS  
19 THE PHONE NUMBER, YOU KNOW, WE ARE WILLING TO ACCEPT THAT.

20 I'M NOT SURE WE NEED A FORMAL INTERROGATORY TO DO IT, BUT  
21 IF THAT'S THE WAY THAT WE SHOULD GO, I THINK WE WERE CONCERNED  
22 ABOUT GETTING TOO FAR ON DISCOVERY, IF THERE WAS GOING TO BE A  
23 JURISDICTIONAL HEARING, THIS WAS GOING TO GET REFERRED TO AN  
24 ARBITRATOR ANYWAYS, GETTING THE BALL TOO FAR DOWN THE ROAD.

25 THE COURT: SURE.

1 MR. PATEK: THAT WAS OUR CONCERN.

2 THE COURT: AND I CERTAINLY DON'T WANT YOU TO WALK  
3 INTO A WAIVER ISSUE ON THAT.

4 SO LET ME TURN BACK TO MR. PATEK, ARE YOU WILLING TO  
5 INFORMALLY GIVE THIS INFORMATION MR. PHAIR HAS REQUESTED OR DO  
6 YOU WANT HIM TO PROPOUND A SINGLE INTERROGATORY?

7 MR. PATEK: WELL, I THINK THERE'S PART OF ME THAT  
8 WOULD LIKE TO HAVE THE INTERROGATORY IN HAND, JUST TO MAKE SURE  
9 THAT THE RECORD IS CLEAR. THAT SAID, I THINK WE CAN ACCELERATE  
10 THE RESPONSE TIME, IT'S A VERY SIMPLE PIECE OF INFORMATION.

11 THE COURT: YES, IT IS.

12 MR. PATEK: AND AGAIN, MY UNDERSTANDING IS THAT THERE  
13 IS NO AGREEMENT, SO WE ARE NOT REALLY WORRIED ABOUT IT, WE  
14 DON'T THINK THIS INQUIRY IS GOING TO TURN ANYTHING UP.

15 THE COURT: OKAY.

16 SO MR. PHAIR, MY RULING WILL BE THAT BECAUSE DISCOVERY IS  
17 OPEN, THAT THE COURT DOES NOT NEED TO MAKE A RULING ON IT, AND  
18 NOTHING PREVENTS YOU FROM PROPOUNDING A SINGLE INTERROGATORY,  
19 AND ONE INTERROGATORY GETTING IDENTIFYING INFORMATION PROBABLY  
20 COULD NOT BE STRETCHED INTO WAIVER BY BEING TOO FAR DOWN THE  
21 ROAD IN DISCOVERY.

22 SO WHY DON'T YOU GO AHEAD AND PROPOUND THAT INTERROGATORY  
23 TODAY AND HOPEFULLY YOU WILL GET A RESPONSE IN SOONER THAN THE  
24 STATUTORY TIME. BUT YOU WILL HAVE THAT INFORMATION AND THEN  
25 YOU CAN DECIDE WHERE TO GO.

1 IF YOU ULTIMATELY LEARN THAT MS. PEREZ IS NOT PART OF THE  
2 LOYALTY PROGRAM AND NEVER SIGNED AN ARBITRATION AGREEMENT AND  
3 MS. BROOKS IS, YOU HAVE A COUPLE OF CHOICES. YOU CERTAINLY  
4 RENEW YOUR MOTION TO COMPEL ARBITRATION FOR MS. BROOKS, OR YOU  
5 COULD SIMPLY ROLL IT INTO YOUR OBJECTION TO CLASS CERTIFICATION  
6 WITH MS. BROOKS AS BEING NOT A TYPICAL CLASS REPRESENTATIVE. I  
7 DON'T CARE. THE RESULT IS GOING TO BE THE SAME, IT REALLY IS  
8 JUST A MATTER OF WHAT YOUR CLIENT WANTS TO DO.

9 THIS KIND OF MOTION WORK IS VERY TIME CONSUMING AND  
10 EXPENSIVE, AND THERE MAY BE -- AND IF YOU'VE GOT -- IF  
11 MR. PATEK HAS A NAMED PLAINTIFF WHO ISN'T BARRED BY ANY  
12 ARGUMENT OF ARBITRATION, THEN THE CASE MOVES ON. SO I WILL  
13 LEAVE THAT IN YOUR HANDS.

14 MR. PHAIR: YES, YOUR HONOR. THANK YOU.

15 AND I THINK YOU ARE HIGHLIGHTING ONE OF THE ISSUES, WHICH  
16 IS CLASS CERTIFICATION. AND I DON'T THINK IT IS JUST  
17 TYPICALITY, I MEAN, OBVIOUSLY THAT'S A BIG ISSUE, BUT I ALSO  
18 THINK IT GOES TO THE SCOPE OF THE CLASS, BECAUSE WE -- MAYBE  
19 MORE THAN HALF OF THE CLASS IS GOING TO BE SUBJECT TO  
20 ARBITRATION.

21 SO IT'S A DIFFERENT ISSUE. EVEN IF MS. PEREZ IS THE  
22 CLASS, THE SOLE CLASS REP, THE ARBITRATION ISSUE IS STILL GOING  
23 TO BE FRONT AND CENTER WHEN YOU GET TO ME FOR CLASS CERT. EVEN  
24 IF MS. BROOKS WERE TO DROP OUT VOLUNTARILY, THE ISSUE  
25 DOESN'T -- MR. PATEK KNEW THIS, HE SEES THIS IN ALL OF HIS

1 CASES.

2 MR. PATEK: YES, I DO.

3 THE COURT: THIS IS WHAT WE DO.

4 AND AS THE SUPREME COURT CONTINUES TO ISSUE RULINGS ON  
5 CLASS CERTIFICATION, THIS ISSUE IS BECOMING CLEARER AND  
6 FAVORING ONE SIDE OR THE OTHER, DEPENDING ON YOUR POSITION.

7 MR. PHAIR: YES, YOUR HONOR. I AGREE WITH THAT.

8 I DO THINK -- OBVIOUSLY I HAVEN'T TALKED TO MY CLIENT YET,  
9 BUT I DO THINK IT'S IMPORTANT FOR US TO HAVE THAT THRESHOLD  
10 ARBITRATION ISSUE, JUST BECAUSE THIS IS AN ISSUE THAT CUTS  
11 ACROSS A LOT OF DIFFERENT CASES. WE FEEL PRETTY STRONGLY ABOUT  
12 OUR ARBITRATION PROVISION, FOR ALL THE REASONS YOU SAID. I  
13 UNDERSTAND THE PROCEDURAL POSTURE, AND I DON'T UNDERSTAND  
14 YOUR HONOR TO BE SAYING THAT YOU DON'T THINK THAT THERE'S  
15 EVIDENCE, JUST THAT EVIDENCE BEFORE THE COURT IN THE PROCEDURAL  
16 POSTURE THAT WE BROUGHT IT.

17 THE COURT: THAT'S EXACTLY RIGHT.

18 AND I'M SIMPLY NOT GOING TO CONSIDER EVIDENCE SUBMITTED IN  
19 THE REPLY BRIEF, BUT I'M NOT EXCLUDING IT FROM A RENEWED  
20 MOTION, AND I TAKE MY LEAVE FROM WHAT JUDGE ORRICK DID IN THE  
21 EVENTBRITE CASE.

22 SO THERE WE ARE, THAT'S OUR ROAD MAP, AND I THINK THERE  
23 WILL BE A LOT OF TALKING OFFLINE BETWEEN THE TWO OF YOU. AND  
24 SO I WILL ISSUE A VERY BRIEF ORDER DENYING THIS MOTION, BECAUSE  
25 IT'S REALLY DENIED ON A PROCEDURAL BASIS AT THIS POINT. I AM

1 NOT GOING TO EVALUATE ALL OF THE OTHER ISSUES. AND I DON'T  
2 THINK IT WOULD BENEFIT YOU AT ALL. WE'VE HAD THIS DISCUSSION.

3 MR. PHAIR, IS THERE ANYTHING ELSE YOU WANTED TO GO OVER  
4 TODAY?

5 MR. PHAIR: NO, YOUR HONOR. THANK YOU. I APPRECIATE  
6 YOUR TIME.

7 THE COURT: MR. PATEK, ANYTHING ELSE FROM YOUR  
8 VIEWPOINT?

9 MR. PATEK: NO, YOUR HONOR.

10 THANK YOU VERY MUCH.

11 THE COURT: OKAY. WELL, I LOOK FORWARD TO SEEING YOU  
12 AT THE NEXT HEARING.

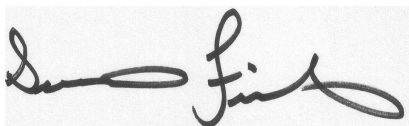
13 MR. PATEK: THANK YOU, YOUR HONOR.

14 (THE PROCEEDINGS WERE CONCLUDED AT 10:35 A.M.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 2/23/22